

Remarks/Arguments begin on page 3 of this paper.

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application.

I. Obviousness-Type Double Patenting Rejection

Applicants acknowledge that the terminal disclaimer filed on August 3, 2004 has been entered with respect to Application No. 10/081,483. In view of this, it is acknowledged that the obviousness-type double patenting rejection is withdrawn.

II. Rejection Under 35 USC §112, First Paragraph

The Examiner has rejected claims 1-14 and alleges that the same are not supported by the written description as required under 35 USC §112, first paragraph. In the rejection, the Examiner mentions, in summary, that the claims contain subject matter which was not described in the specification. Particularly, the Examiner mentions that support cannot be found for a container that does not comprise an expandable bag.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is supported by the specification as originally filed for at least the following reasons.

Applicants submit that it is well settled that a patent specification does not have to describe each element of a claim *verbatim*. Applicants submit that three (3) figures have been originally filed with the present patent application. None of the figures, especially Figure 1, shows an expandable bag. In fact, Figure 1 depicts a beverage

product 10 in a container 12 having beverage 18 and a headspace 10a whereby beverage 18 is dispensed through dip tube 26 which is connected to a draw nozzle 36 to thereby transport effervescent beverage through a plurality of dispensing channels 34 of the dispenser nozzle 28 and through actuator opening 20 for consumption.

Clearly, Figure 1 describes a beverage product 10 that does not comprise an expandable bag. Figures 2-4, also, do not suggest nor require the mandatory presence of an expandable bag. In view of this, it is clear that the claims, as amended, in the reply under 37 CFR §1.111 are clearly supported by the specification as originally filed. In view of this, Applicants respectfully request that the rejection made under 35 USC §112, first paragraph be withdrawn and rendered moot.

III. Rejection Under 35 USC §102(b)

The Examiner has, again, rejected claims 1, 2, 5, 7, 10, 11, 12 and 14 under 35 USC §102(b) as being anticipated by Ash, U.S. Patent No. 3,063,841 (hereinafter '841). In the rejection, the Examiner continues to mention, in summary, that the claims of the present application, as amended, are anticipated by column 1, line 60 to column 2, line 2, and column 2, lines 22-70, and column 3, lines 17-21 of the '841 reference. As to claim 14, the Examiner continues to believe that the '841 reference teaches that gas comprises nitrogen and carbon dioxide, and therefore, the composition described in the same is smooth and silky.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record in the last Office Action, the present invention is directed to a pressurized beverage product comprising:

- (a) a beverage with a pressure resisting container, the beverage comprising a soluble gas, a sparingly soluble gas, or a mixture of gases dissolved therein; and
- (b) a valve in a position to seal the container, the valve, when opened, suitable to dispense the beverage as an effervescent beverage to a mouth of a consumer

wherein, internally, the container has a headspace pressurized to less than about 25 bar, gauge, with soluble gas, sparingly soluble gas, or a mixture of gases and further wherein the container does not comprise an expandable bag.

The invention is further defined by the dependent claims, which claim, among other things, that the beverage comprises oxygen, nitrogen or a mixture thereof; that the beverage product is pressurized from about 1.0 bar to about 15.0 bar, gauge; that the beverage product can be juice, tea, coffee, an alcoholic drink; a diet drink, a protein-based drink, soda or pharmaceutical or medicinal drink; that the beverage comprises suspended bubbles and at least 80% of the suspended bubbles have a diameter that is less than about 0.5 mm; that the beverage is liquid-continuous; that the beverage is water-continuous, and that the beverage is smooth and silky upon consumption.

In contrast, and as already made of record, the '841 reference is directed to a method for dispensing liquids under pressure into a drinking vessel so as to ensure a fine, regular and enduring head on the beverage going into the vessel. There is no teaching whatsoever in the '841 reference that suggests that the method of dispensing is geared towards dispensing an effervescent beverage directly into the mouth of a consumer.

The '841 reference discloses a dispensing apparatus that is similar to a faucet in a conventional household sink, all of which is attached to a cask or barrel. Taking a drink directly from a household sink would be equivalent to taking a drink directly from the apparatus described in the '841 reference. Again, the present invention is directed to a pressurized beverage product that is suitable to dispense a beverage in effervescent form directly into the mouth of a consumer.

In view of the above, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in a single prior art reference, namely the '841 reference. In view of this, it is clear that the rejection made under 35 USC §102(b) is improper and should be withdrawn.

IV. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1-4, 11, 13 and 14 under 35 USC §102(b) as being clearly anticipated by de la Guardia, U.S. Patent No. 5,738,254 (hereinafter '254). In the rejection, the Examiner mentions, in summary, that the '254 reference describes an air pressurized effervescent beverage containing 2-liter bottle. The Examiner, believes and mentions that such a bottle is known to be suitable for dispensing into a person's mouth. The Examiner further believes that the volume occupied for the pressurized effervescent beverage would include 30% up to the fill level of the conventional carbonated beverage bottle. The Examiner also mentions that the container described in the '254 reference does not comprise an expandable bag. In view of the above, the Examiner believes that the novelty rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a bagless and pressurized beverage product suitable to dispense effervescent beverage directly into the mouth of a consumer.

The invention of claim 1 is further defined by the dependent claims, which claim, among other things, the type of gases or mixture of gases that may be present within the beverage; specific amounts of nitrogen, oxygen and argon within the beverage; that the beverage is liquid-continuous; that the container has a volume from about 30 mm to about 3 liters and the volume is occupied with about 30% to about 96% beverage; and that the beverage is smooth and silky upon consumption.

In contrast, the '254 reference is directed to a repressurizing beverage device for removable attachment to the threaded neck of a carbonated beverage container. The repressurizing device of the '254 reference comprises a pump 7 which is used to repressurize a beverage container in a rapid and efficient manner requiring minimal effort. The repressurizing beverage dispenser described in the '254 reference is cumbersome and meant to preserve carbon dioxide in a beverage, particularly in larger beverage containers so that the beverage will not be discarded when being rendered flat. Moreover, the repressurizing beverage dispenser of the '254 reference is designed so that a lever acts as a counterweight to a handle in order to keep the bottle balanced so that it will not tip over when standing. Clearly, there is no teaching whatsoever in the '254 reference that even remotely suggests a pressurized beverage product that is

suitable to be dispensed as an effervescent beverage into the mouth of a consumer as set forth in the presently claimed invention. Again, the teachings of the '254 reference are merely directed to the prevention of carbon dioxide escape in a beverage sold in a bottle which is continuously opened and closed. It is not directed to the dispensing of an effervescent beverage that generates a smooth and silky sensation. Again, the '254 reference is directed to a device for repressurizing a container. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the '254 reference. Therefore, the novelty rejection should be withdrawn and rendered moot.

V. Rejection Under 35 USC §103

The Examiner has rejected claim 6 under 35 USC §103 as being unpatentable over de la Guardia, U.S. Patent No. 5,738,254 (hereinafter '254) as applied to claims 1-4, 11, 13 and 14 above. In the rejection, the Examiner mentions, in summary, that the '254 reference is silent in teaching the beverage has less than 0.5 ppm chlorine. However, the Examiner concludes it is well known to remove chlorine from water to make carbonated beverages since chlorine is considered a contaminant. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a bagless and pressurized beverage product suitable to dispense effervescent beverage directly into

the mouth of a consumer. The '254 reference is directed to a re-pressurizing beverage dispenser for removable attachment to the threaded neck of a carbonated beverage container. The re-pressurizing device of the '254 reference has a pump which is used to re-pressurize a beverage container in a rapid and efficient manner, requiring minimal effort. Nothing whatsoever in the '254 reference even remotely suggests a pressurized beverage product that is suitable to be dispensed as an effervescent beverage directly into the mouth of a consumer as set forth in the presently claimed invention. Since this is true, the obviousness rejection is improper and should be withdrawn and rendered moot.

VI. Rejection Under 35 USC §103

The Examiner has rejected claims 8 and 9 under 35 USC §103 as being unpatentable over de la Guardia, U.S. Patent No. 5,738,254 as applied to claims 1-4, 11, 13 and 14 above and further in view of Atkins et al., U.S. Patent No. 3,917,867 (hereinafter '867). In the rejection, the Examiner mentions, in summary, that the '254 reference describes a carbonated beverage but is silent in teaching a pulp free citrus beverage. In an attempt to cure the vast deficiencies of the '254 reference, the Examiner relies on the '867 reference for describing a solids free orange juice-based beverage that can be made into a carbonated orange juice. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

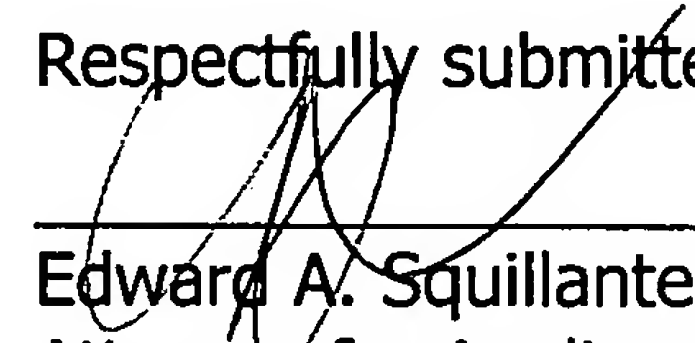
As already made of record, the present invention is directed to a bagless and pressurized beverage product suitable to dispense effervescent beverage directly into the mouth of a consumer. Claims 8 and 9 further define the independent claim by characterizing the beverage product as one which can be citrus and free of pulp. In contrast, and as already made of record, the '254 reference is merely directed to a device that prevents carbon dioxide escape in a beverage sold in a bottle which is continuously opened and closed. The container or bottle described in the '254 reference is not designed for direct release of a beverage into the mouth of a consumer. None of the vast deficiencies of the '254 reference are even remotely cured by the '867 reference since the '867 reference merely describes a process for producing a natural orange base by dilution and centrifuging. The combination of references relied on by the Examiner does not, even remotely, describe a beverage that is effervescent and suitable to be dispensed into the mouth of a consumer as set forth in the presently claimed invention. In view of this, Applicants respectfully request that the obviousness rejection be withdrawn and rendered moot.

Applicants acknowledge that the rejections present in the Non-Final Office Action but not present in the current Final Office Action have been withdrawn and rendered moot.

Applicants submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited so that the extreme expense of an appeal can be avoided.

In the event the Examiner has any questions or concerns regarding the present patent application, he is kindly invited to contact the undersigned at his earliest convenience.

Respectfully submitted,



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